

REQUEST FOR PROPOSALS

Actuary Services
for the
Guaranteed Education Tuition (GET) Program

Higher Education Coordinating Board
On behalf of the Committee on Advanced Tuition Payment
919 Lakeridge Way SW
PO Box 43450
Olympia, WA 98504-3450

August 4, 2003

A voluntary pre-proposal conference will be held in the office of the Higher Education Coordinating Board (HECB), 919 Lakeridge Way SW, Olympia, Washington at *10:00 a.m. on Wednesday, August 20, 2003*. Staff will be available for questions regarding the background, scope, and intent of this project. Interested parties can arrange to be connected by speakerphone to the conference. Please RSVP to Larry Lee at (360) 753-7874 or e-mail: larryl@hecb.wa.gov.

This Request for Proposals (RFP) and any changes or updates will be posted on the HECB web site: www.hecb.wa.gov.

The Statement of Qualifications and Proposal Response must be received at the above address by 4:00 p.m., Friday, September 19, 2003. Proposals received after that date and time will not be considered. Fax and electronic submittals will not be accepted.



TABLE OF CONTENTS

I. PURPOSE	Page 3
II. BACKGROUND	Page 3
III. PROPOSAL SCOPE AND OBJECTIVES	Page 4
IV. PROJECT TIME FRAME	Page 5
V. GENERAL REQUIREMENTS	Page 5
VI. PROPOSAL SPECIFICATIONS	Page 5
VII. GENERAL INFORMATION	Page 7
VIII. OTHER GENERAL ISSUES OF NOTE	Page 8
IX. PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS	Page 9
X. OTHER CONSIDERATIONS	Page 10
XI. APPENDICES	Page 14
A. STATEMENT OF QUALIFICATIONS	Page A1
B. SAMPLE - PURCHASED SERVICE CONTRACT	Page B1
C. GENERAL TERMS AND CONDITIONS	Page C1

REQUEST FOR PROPOSALS

Actuary Services for the Guaranteed Education Tuition (GET) Program

I. PURPOSE

On behalf of the Committee on Advanced Tuition Payment, commonly known as the GET Committee (Committee), the Higher Education Coordinating Board (HECB) is soliciting bid proposals through this competitive procurement process for actuary services for the Guaranteed Education Tuition (GET) Program.

This RFP should provide prospective Bidders with the information necessary to assess the ability of their organization to meet the needs of the GET Program in providing these services. The Committee reserves the right to reject all bids.

II. BACKGROUND

Guaranteed Education Tuition (GET), Washington State's prepaid college tuition program, began operation in August 1998. GET is a qualified tuition program under Section 529 of the Internal Revenue Code and is authorized under Chapter 28B.95 of the Revised Code of Washington. The basic design of the program allows families to purchase tuition units today, for use at a later date (at least two years later), regardless of the increase in tuition. These funds are invested, and the purchaser is guaranteed a return, which will cover tuition at some future date. Investment of the Advanced College Tuition Payment Fund is the responsibility of the Washington State Investment Board.

The Committee on Advanced Tuition Payment, commonly referred to as the GET Committee, governs the program. The Committee is composed of the Executive Director of the Higher Education Coordinating Board, the State Treasurer, the Director of the Office of Financial Management, and two citizen members.

The Higher Education Coordinating Board administers the GET program. Day-to-day operation of the program is the responsibility of the GET staff. The staff currently consists of a Director and fourteen full-time, permanent staff. The program contracts with outside vendors for some of its functions including marketing, material fulfillment, actuarial analysis, tax advice, patent and copyright, and legal services.

The GET Program is required by statute to use a "nationally recognized actuarial firm" to provide an annual actuarial analysis of the Program, and provide recommendations for setting unit prices twice annually (effective September 1 and May 1).

The GET Program operates on a self-sustaining basis. The total administrative budget, which includes costs for all services and staffing, for July 1, 2003, through June 30, 2004 is \$3.1 million. The funds available for future operations are dependent on the growth and success of the program.

The first payout of program benefits occurred in September 2000. In fall 2003, over 1,100 students are eligible to use GET benefits. As of June 30, 2003, there were 36,319 accounts representing the purchase of 7.5 million tuition units, with assets of \$366.6 million. The 2003-04 enrollment period begins on September 15, 2003 and ends on March 31, 2004.

The GET Program has used the same actuary, Milliman USA, since inception. Milliman USA is located in Wayne, Pennsylvania. The current contract for actuary services expires December 31, 2003.

III. PROPOSAL SCOPE AND OBJECTIVES

The GET Program began selling units in fall 1998 at a price of \$35 per unit. The unit price has increased annually since then (1999: \$38, 2000: \$41, 2001: \$42, 2002: \$52, 2003: \$57) based on recommendations from the Program's actuary.

The actuarial contractor will provide services as outlined below and will have documented and demonstrated experience in providing such services in similar applications. The services will be provided under the direction of the GET Director. Bidders are encouraged to recommend and include in the proposal other suggested activities necessary or beneficial to the continued successful operation of the program. Costs for these suggested activities must be broken down and shown separately in the proposal.

Actuarial Services

- Provide actuarial consultation and advisory services on any technical, policy, legal or administrative issues arising during the course of operation.
- Develop twice annual pricing recommendations (effective May 1 and September 1 of each year) including, but not limited to:
 - Review contract data
 - Review investment returns
 - Develop assumptions regarding tuition growth, investment returns, and inflation
 - Develop assumptions regarding administrative expenses
 - Develop assumptions regarding contract sales
 - Prepare preliminary valuation for presentation with pricing recommendations
- Attend selected Committee meetings and legislative hearings as requested (2-3 visits annually).
- Prepare final valuation report.
- Provide an asset/liability study to determine the appropriate size of the Stabilization Reserve.
- Provide special reports, including reports on tuition impacts for legislative hearings, as requested.

- Provide investment consultation services as needed for development and operation of a college savings plan.
- Interact with legal and tax counsel, if necessary.

IV. PROJECT TIME FRAME

It is anticipated that the contract period will begin approximately January 1, 2004, and end December 31, 2005, with the possibility of two, 2-year extensions at the discretion of the Committee.

Sequence of Activities

Event	Date
RFP Issued	On or about August 4, 2003
Voluntary Pre-Proposal Conference	August 20, 2003, 10:00 a.m. (PST)
Proposals Due in GET office	September 19, 2003, prior to 4:00 p.m. (PST)
Oral Presentations (finalists)	On or about October 9, 2003
Recommendation to GET Committee	November 3, 2003
Work Commences	On or about January 1, 2004

V. GENERAL REQUIREMENTS

Individuals or firms wanting to be considered for the components of this project should possess the following qualifications:

- Demonstrate closely related expertise in the relevant service area included in the proposal.
- Willingness and ability to collaborate with staff to discuss and implement proposed strategies.
- Willingness and ability to make at least three visits to Olympia each year, or as necessary, to consult with staff and the Committee. Expenses related to these trips should be included in the Cost Proposal.

VI. PROPOSAL SPECIFICATIONS

The invitation to submit a proposal will be advertised in the Seattle Daily Journal of Commerce. Any interested party, in addition to those to whom the HECB has sent an invitation, are welcome to request a copy and respond if they believe that they can satisfy the proposal requirements.

Any modification to the specifications or answers to bidder questions will be distributed as a formal addendum to the bid specifications.

This Request for Proposals (RFP) and any updates will be posted on the HECB web site: www.hecb.wa.gov.

Proposals will be accepted until 4:00 p.m. on Friday, September 19, 2003, at the Higher Education Coordinating Board, 919 Lakeridge Way SW, Olympia, Washington.

Organization of the Proposal

The proposal submitted by the bidder must comply with the format and content requirement detailed in this section. The bidder must submit one original and four copies of the proposal. All copies must be in a single sealed package, with the project title and name of the bidder. The original must be accompanied by a cover letter with an official, original signature, which binds the bidder to both the technical and cost components of the proposal. Throughout the duration of the contract-awarding process, all inquiries and communication are to be directed to the RFP Coordinator, Larry Lee, at (360) 753-7874 or via e-mail: larryl@hecb.wa.gov. The RFP and any updates will be posted on the HECB web site: www.hecb.wa.gov.

Proposal Contents

The proposal must contain the following sections: Cover Document, Table of Contents, Introduction, General Approach, and Work Plan (including the schedule necessary to accomplish the tasks and to produce the deliverables), Management and Staffing, Related Experience and References, and Cost Proposal. Each section must be well organized, brief, and to the point.

1. **Cover Document** – This document should include the name of the bidder and clearly identify the services that the proposal addresses.
2. **Table of Contents** – This section will identify major points of discussion by page number.
3. **Introduction** – This section will serve to demonstrate to the reviewers the bidder's understanding of the program's audience, context, purpose, objective, and intended product.
4. **General Approach** – This section will provide an overview of the bidder's proposed approach to delivering the services. The information presented must be clearly related to the material presented in the Introduction. An overview of the methods to be used in providing the services, as well as plans for analysis and reporting must be included.
5. **Work Plan** – This section will describe, in detail, the specific methods, tasks, and activities proposed to be undertaken, in order to provide the Actuarial Services outlined in Section III, Proposal Scope and Objectives.
6. **Management and Staffing** – This section will present a plan for the internal management of contract work that will ensure orderly and timely accomplishment of the tasks set forth in the bidder's proposed Work Plan. The bidder must also identify proposed staff and the percentage of full-time equivalency that will be devoted to the contract work and a brief job description, including any subcontractors. A resume must be provided that is sufficiently detailed to allow for an evaluation of the person's competency and expertise. If any support must be provided by a subcontractor, the said subcontractor must indicate its capability and willingness to carry out the work.
7. **Related Experience and References** – This section will describe the experience of the bidder in performing related work and identify those members of the proposed staff who have participated in such work. This section must also include abstracts of related work,

names and phone numbers of 3-5 client references. Previous experience with state agencies, legislatures, and other governmental entities, especially other prepaid tuition or college savings programs, must be indicated.

8. **Cost Proposal** – This section will detail the proposed costs associated with providing the Actuarial Services detailed in Section III, Proposal Scope and Objectives. These costs must include the number of staff hours associated with each task, with separate identification of professional and clerical staff hours. Standard line items of expense must be used to identify staff salaries, benefits, operation costs, travel and per diem, and overhead. All costs must be itemized.
9. **General Information** – This section will include the following:
 - Name and legal entity with whom the contract is to be written;
 - Address, telephone and fax numbers, and e-mail addresses;
 - Federal Employer ID number or Social Security number if sole proprietor;
 - Name of the individual with prime responsibility and final authority for the work;
 - Location of the facility from which the bidder will operate, if different from the address listed above;
 - Identification of the names, addresses, contact persons, and telephone numbers of 3-5 customers for whom the bidder has provided, or is currently providing, services similar to those required under this RFP. The Committee reserves the right to contact each customer listed in the proposal.

VII. GENERAL INFORMATION

If the bidder, or any party named above, has contracted with the State of Washington during the past 24 months, indicate the name of the agency, the contract number and description, and/or other information available to identify the contract.

If the bidder, or any party named, previously was, or is, an employee of the State of Washington during the past 24 months, the bidder must indicate his/her Social Security number, job title, agency employed by, and separation date.

Bidders who employ, or have on their governing board, as of the date of their bid, state employees or former state employees, will identify such persons and their position and responsibilities with the bidder's organization. Failure to disclose this information may result in disqualification.

All proposals received will remain confidential until the contract, if any, resulting from the RFP, is signed by the Executive Director of the HECB. Thereafter, the proposals will be deemed as public records.

VIII. OTHER GENERAL ISSUES OF NOTE

Additional Information

The Committee reserves the right to request and receive additional information from any bidder. Finalists in the selection process will be requested to make an oral presentation to supplement their proposal. At the time of the oral presentation, the bidder must also submit a synopsis of the presentation signed by the same official who signed the proposal.

Questions about the RFP – Pre-Proposal Conference

The Committee believes strongly that qualified vendors must be given every opportunity to understand the requirements of the RFP. Therefore, a voluntary bidder's pre-proposal conference will be held **at 10:00 a.m. on Wednesday, August 20, 2003**, in Olympia, Washington, for the purpose of answering questions about the RFP. Questions may be answered in a group setting or one-on-one to review and further clarify program requirements. Interested parties can arrange to be connected by speakerphone to the conference. Should there be a change in the RFP requirements resulting from this conference, the Committee reserves the right to amend the RFP and post a revised RFP within one week of the conference. Any revisions, changes or updates to the RFP will be posted on the HECB web site: www.hecb.wa.gov. Questions arising after the pre-proposal conference, and requests for clarification regarding this RFP may be directed in writing to the RFP Coordinator, Larry Lee, at the Higher Education Coordinating Board, PO Box 43450, Olympia, WA, 98504-3450. Fax: 360-704-6271; or e-mail: larryl@hecb.wa.gov.

Acceptance/Rejection of Proposals by the Committee

The issuance of this RFP in no way constitutes a commitment by the Committee to select any proposal or to award a contract to any firm. The Committee is issuing this proposal to collect pertinent data in making a determination and as such, reserves the right to accept or reject any or all proposals or to accept or reject a portion or portions of a proposal. The Committee reserves the right to reject all bids if, at the sole discretion of the Committee, other circumstances or options for providing the functions result in the best interest of the Program. The Committee also reserves the right to waive minor irregularities in any proposal submitted. The Committee reserves the right to reject any and all proposals that fail to show a documented ability to provide the services as described in this RFP.

Proposals Become the Property of the Committee

All proposals, including all data, materials, and documentation submitted within, become the exclusive property of the Committee upon receipt and will not be returned to the sender once opened.

Public Disclosure of Proposal

Proposals will become public documents upon award of a contract. Each proposal will be subject to public inspection in accordance with such public disclosure laws, unless specifically

exempted from such laws. Any trade secrets or proprietary information contained in, or submitted with, a proposal must be clearly identified in the proposal, and the proposal must clearly indicate only the specific information or material that constitutes a trade secret or proprietary information. Classification of the entire proposal, individual costs, or total costs as proprietary or trade secrets is unacceptable and may result in rejection of the proposal.

IX. PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS

Oral Presentations

The Committee will require an oral presentation from finalists. The oral presentations will take place in Olympia, Washington, on or about October 9, 2003 and will be used to determine whether a proposal meets the minimum qualifications and whether a proposal adequately portrays a firm's ability to provide the required services.

Restatement of Service Response

Proposals must provide a response for all services outlined under Actuarial Services in Section III of this RFP. Responses must reiterate the service component being addressed in sequence, immediately followed by the corresponding response. To assist in the evaluation process, each response should start on the same page as the service component. Please respond in detail – responses of “can provide” will not be considered.

Evaluation of Proposals

All proposals will be evaluated in accordance with the following criteria. Proposals not meeting the minimum criteria may, at the discretion of the review committee, be rejected from further consideration. The Committee reserves the right to use any other information that it obtains in order to evaluate the proposal and make an award.

Minimum Qualifications and Proposal Review Process Criteria

Understanding the Purpose and Objective 10%

The proposal must demonstrate that the bidder has a particular knowledge of the requirements of a qualified prepaid tuition program, a college savings program, or similar project. Proposals must include substantial evidence of the abilities to undertake the services outlined in the RFP.

Technical Quality of Approach and Methods 15%

The proposal must detail an overall approach and specific methods, models, tasks, and activities, which are sound, clear, feasible, and responsive, to the requirements of the RFP. The proposal must demonstrate that the technical expertise is in conformity with specifications detailed in section III: Proposal Scope and Objectives.

Pricing 30%

The proposal must include a pricing structure that includes hourly rates or a pricing structure that can be easily understood. Pricing must include itemization of per hour rates of personnel based upon experience, education and training. As price is an important element of the selection criteria, all proposals must provide clear and objective evidence showing that the benefits of a given approach exceed the costs.

Experience and Expertise Necessary to Provide Quality Services 25%

The proposal must provide a list of all proposed staff detailing their experience and expertise with conducting similar projects. It must specify the project director and detail staff knowledge showing their sensitivity about the context and issues surrounding the program. The proposal must clearly demonstrate the resources and overall capability of the bidder to perform the actuarial services requested.

The proposal must clearly establish the ability, capacity and skill of the bidder to provide the services required.

Organization and Background 20%

Other areas that will be evaluated will include the character, integrity, reputation, judgment, experience, and efficiency of the bidder, whether the bidder can perform the contract within the time specified, the quality of performance of previous contracts and the previous and existing compliance by the bidder with laws relating to the contract.

X. OTHER CONSIDERATIONS

Minority and Women-Owned Business Participation

In accordance with the policies set forth in chapter 39.19 RCW, the State of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in

response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of OMWBE shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

Scheduled Meetings

The contractor should plan to have a first meeting with the Contract Manager at the beginning of the contract period that will serve as the briefing on plans for performing the work. Additional meetings may be scheduled, as needed, by either party to the contract. Attendance at GET Committee meetings will be necessary when unit pricing, actuarial soundness and/or the annual actuarial report are scheduled to be discussed.

Deliverables

The Contract Manager will serve as the contractor's contact with the Committee during the duration of the contract period. Any information developed for the purpose of this project shall remain in the public domain. In addition, if the contractor develops databases, spreadsheets or computer models for use in this work, computer-readable copies are to be provided to the Committee on an annual basis, or as needed by the program.

The Contract Manager will review all reports for compliance with contract terms. Specifications for any necessary revisions will be set forth by the Contract Manager in writing and are binding on the contractor insofar as the specifications do not exceed the scope of the work described in the contract. The contractor must revise and deliver to the Contract Manager, within 15 working days, any work deemed unacceptable by the Contract Manager.

Staff Replacements

The contractor will be required to obtain prior approval from the Contract Manager before changing project management personnel or professional/technical staff members.

References

Information gathered from references submitted in response to this RFP will also be evaluated as a measure of expertise and experience. Failure to provide adequate references may result in a proposal being rejected.

Selection Process

All proposals will be evaluated using the criteria identified in the RFP. A review and selection panel will recommend the contractor for approval by the Committee. For all proposals meeting the minimum qualifications, cost will be the deciding factor. Bidders should strive to present a proposal of the greatest possible technical merit for the fee proposed.

The Committee reserves the right, at its sole discretion, to reject any and all proposals (bids) without penalty. The Committee also reserves the right to reject all bids if, at the sole discretion of the Committee, other circumstances or options for providing the functions result in the best interest of the Program. The final selection, if any, will be that proposal which, in the opinion of the Committee after review of all submissions by the review and selection panel, best meets the requirements for the described or similar service(s) set forth in this.

The Committee reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal must be submitted initially on the most favorable terms that the bidder can offer. The bidder shall specifically stipulate that the proposal is predicated upon the acceptance of all the terms and conditions contained in the RFP.

The Committee is not liable for any costs incurred by the bidder associated with the preparation of a proposal submitted in response to this RFP.

Revisions to the RFP

In the event it becomes necessary to revise any part of the RFP, addenda will be posted on the HECB website and will be provided to all persons/firms who requested a copy of the RFP from the HECB.

Debriefing

Upon request, a debriefing conference will be scheduled for any bidder whose bid is not accepted. The request for a debriefing conference must be in writing and received by the Associate Director for Administrative Services within three (3) business days after the bidder's earliest receipt of the notice of awards. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting bidder's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

Protest Procedure

This procedure is available to bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the bidder is allowed three (3) business days to file a protest of the process used to select a successful bidder with the HECB Executive Director. Protests may be submitted by facsimile, but must be followed by the original document.

Bidders protesting the selection of a successful bidder/vender resulting from this RFP shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to bidders under this RFP.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the HECB Executive Director.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the RFP or HECB policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) the HECB's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the HECB. All available facts will be considered and a decision will be issued by the HECB Executive Director or his delegate within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another bidder who submitted a proposal, such bidder will be given an opportunity to submit its views and any relevant information on the protest to the Executive Director.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the HECB's action; or
- Find only technical or harmless errors in the HECB's acquisition process and determine the HECB to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the HECB options which may include:
 - Correcting the errors and reevaluating all proposals, and/or
 - Reissuing the solicitation document and beginning a new process, or
 - Making other findings and determining other courses of action as appropriate.

If the HECB determines that the protest is without merit, the HECB will enter into a contract with the apparently successful bidder. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

Deadline for Submitting Proposals

The bidder must submit one original and five copies of the proposal **by 4:00 p.m. (PST) on September 19, 2003**. Bidders mailing proposals should allow normal mail delivery time. All copies must be in a single sealed package, with the project title and name of the bidder. At least

two copies of the proposal accompanied by a cover letter with an official original signature that binds the bidder to the technical and cost components of the proposal. Mail proposals to:

Larry Lee, RFP Coordinator
Guaranteed Education Tuition (GET)
Higher Education Coordinating Board
919 Lakeridge Way SW
PO Box 43450
Olympia, WA 98504-3450

Proposals must include a signed Statement of Qualifications and be received at the address listed above by 4:00 p.m. (PST), September 19, 2003. Proposals received after that date and time will not be considered. Fax and electronic submittals will not be accepted.

Throughout the duration of the contract-awarding process, all inquiries and communication are to be directed to the RFP Coordinator, Larry Lee, at (360) 753-7874 or via e-mail: larryl@hecb.wa.gov. The RFP and any updates will be posted on the HECB web site: www.hecb.wa.gov.

Disabilities

Assistance will be provided to disabled bidders who request such assistance. Please contact us as early as possible regarding any assistance you may require. A telecommunication device for the deaf is available at (360) 753-7801.

XI. APPENDICES

- A. STATEMENT OF QUALIFICATIONS
- B. SAMPLE - PERSONAL SERVICE CONTRACT
- C. GENERAL TERMS AND CONDITIONS

APPENDIX A

STATEMENT OF QUALIFICATIONS

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s).

1. The prices and/or data have been determined independently, without consultation communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or firms for the purpose of presenting a single proposal.
2. The attached proposal is a firm offer for a period of 60 days following receipt, and the GET Committee may accept it without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
3. In preparing this proposal, I/we have not been assisted by any current or former employee of the State of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Neither does such a person, nor any member of his or her immediate family, have any financial interest in the outcome of this proposal. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.
4. I/we understand that the GET Committee will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the GET Committee and I/we claim no proprietary right to the ideas, writing, items or samples unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other bidder or to any competitor.
6. No attempt has been made or will be made by the bidder to include any other person or firm to submit or to not submit a proposal for the purpose of restricting competition.
7. I agree to the special terms and conditions as shown in appendix B.

Signature of Bidder

Date

Title

APPENDIX B

S A M P L E

PERSONAL SERVICES CONTRACT

**HIGHER EDUCATION COORDINATING BOARD
ON BEHALF OF THE COMMITTEE ON ADVANCED TUITION PAYMENT
SPECIAL TERMS AND CONDITIONS**

This Contract is made and entered into by and between the State of Washington, Higher Education Coordinating Board, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Contractor Name
Address
City, State & Zip Code
Phone
E-mail Address
Washington State UBI No.
Federal ID No.

PURPOSE

The purpose of this contract is to provide actuarial services for the Guaranteed Education Tuition Program.

SCOPE OF WORK

- A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as included in the CONTRACTOR'S Proposal dated _____ attached as Exhibit B, and the AGENCY'S Request for Proposals attached as Exhibit C.
- B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from January 1, 2004 through December 31, 2005. Up to two, 2-Year contract extensions may be authorized by the AGENCY at rates not to exceed 5% per annum of the above rate unless specifically authorized by the AGENCY.

COMPENSATION AND PAYMENT

AGENCY shall pay an amount not to exceed _____ (\$ _____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

BILLING PROCEDURES

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
<u>Contractor Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: () Fax: () E-mail address:	Larry Lee Higher Education Coordinating Board PO Box 43450 Olympia, WA 98504-3450 Phone: (360) 753-7874 Fax: (360) 704-6274 E-mail address: larryl@hecb.wa.gov

INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any **subcontractors** provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:
\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage
3. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the State of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

As fiduciaries, neither the HECB, nor the GET Program, may release or limit the liability of any of its contractors. Contractors are responsible for ensuring that adequate insurance protection is available to protect themselves from claims based on their acts and/or omissions.

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument

- Exhibit A – General Terms and Conditions
- Exhibit B – Contractors' Proposal, dated _____
- Exhibit C – Request for Proposals, dated August 4, 2003
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

APPENDIX C

GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the Higher Education Coordinating Board, of the State of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawful representing that Agency.
- B. "Agent" shall mean the Executive Director, Higher Education Coordinating Board, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The term "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

ACCESS TO DATA -- In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED -- No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS -- This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 -- The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT -- The work to be provided under this contract, and any claim arising there under, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES -- In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION -- The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as

confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST – Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

COPYRIGHT PROVISIONS -- Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the

Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES – Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with xxx (Agent). Disputes shall be resolved as quickly as possible.

1. The request for a dispute hearing must:
 - be in writing;
 - state the disputed issue(s);
 - state the relative positions of the parties; and
 - state the Contractor's name, address, and contract number; and be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Agency and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract, which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution agent whenever possible.

GOVERNING LAW -- This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION – To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, the Agency, and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR -- The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the

Agency. The Contractor will not claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE – The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY – Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY -- Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the rights to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Agency. Contractor shall certify

return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

PUBLICITY -- The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract which, in the Committee's judgment, the HECB, Committee or Program's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE -- The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, rule, regulation, or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY – The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY – While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency.

TAXES – All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE – In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Agency has the right to suspend or terminate this Contract. This Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 3 days, the contract may be terminated. The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract.

In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (I) was not in default, or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES -- Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency.

Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent Agency may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agency any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agency; and
7. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS --

- A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
- B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of

the Contractor to maintain and administer that property in accordance with sound management practices.

- D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER -- Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by the Agency.